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7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9 WESTERN DIVISION  
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11 BUNCHHOY PHAM, ) No. CV 10-02190-VAP (VBK)  
12 )  
13 Petitioner, ) ORDER (1) ACCEPTING AND ADOPTING  
14 ) THE REPORT AND RECOMMENDATION OF  
15 v. ) THE UNITED STATES MAGISTRATE  
16 ) JUDGE, AND (2) DISMISSING THE  
17 ARNOLD SCHWARZENEGGER, ) PETITION FOR WRIT OF HABEAS  
18 ) CORPUS  
19 Respondent. )  
20 \_\_\_\_\_ )  
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22 Pursuant to 28 U.S.C. §636, the Court has made a de novo review  
23 of the Petition for Writ of Habeas Corpus ("Petition"), all of the  
24 records herein and the Report and Recommendation of the United States  
25 Magistrate Judge ("Report").  
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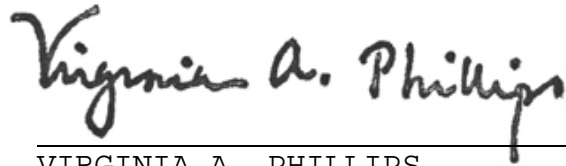
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1       **IT IS ORDERED** that: (1) the Court accepts and adopts the Report  
2 and Recommendation, (2) the Court declines to issue a Certificate of  
3 Appealability ("COA");<sup>1</sup> and (3) Judgment be entered dismissing the  
4 Petition without prejudice.

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6 DATED: June 17, 2010



VIRGINIA A. PHILLIPS  
UNITED STATES DISTRICT JUDGE

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16       <sup>1</sup> Under 28 U.S.C. §2253(c)(2), a Certificate of Appealability  
17 may issue "only if the applicant has made a substantial showing of the  
18 denial of a constitutional right." Here, the Court has adopted the  
19 Magistrate Judge's finding and conclusion that the Petition is  
20 unexhausted. Thus, the Court's determination of whether a Certificate  
21 of Appealability should issue here is governed by the Supreme Court's  
22 decision in Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595 (2000),  
23 where the Supreme Court held that, "[w]hen the district court denies  
24 a habeas petition on procedural grounds without reaching the  
25 prisoner's underlying constitutional claim, a COA should issue when  
26 the prisoner shows, at least, that jurists of reason would find it  
27 debatable whether the petition states a valid claim of the denial of  
28 a constitutional right and that jurists of reason would find it  
29 debatable whether the district court was correct in its procedural  
30 ruling." 529 U.S. at 484. As the Supreme Court further explained:

"Section 2253 mandates that both showings be made before the  
court of appeals may entertain the appeal. Each component  
of the § 2253(c) showing is part of a threshold inquiry, and  
a court may find that it can dispose of the application in  
a fair and prompt manner if it proceeds first to resolve the  
issue whose answer is more apparent from the record and  
arguments." Id. at 485.

Here, the Court finds that Petitioner has failed to make the  
requisite showing that "jurists of reason would find it debatable  
whether the district court was correct in its procedural ruling."